

**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

**Issued by the Department of Transportation
on the 6th day of March, 1996**

SERVED MARCH 6, 1996

Western Pacific Airlines, Inc.

Violations of 49 U.S.C. 41708
and 14 CFR Part 241

CONSENT ORDER

This consent order concerns reporting delinquencies that constitute violations of 49 U.S.C. 41708 and the accounting and reporting requirements specified in Part 241 of the Department's regulations (14 CFR Part 241) by Western Pacific Airlines, Inc. (Western Pacific), a certificated air carrier. This order directs Western Pacific to cease and desist from future violations and to pay compromise civil penalties.

The Department uses carrier reports to monitor carrier fitness and ownership, to analyze the effects of air transportation industry policy initiatives, to allocate airport development funds, to forecast traffic, and to develop airport and airway traffic policy. A carrier's failure to file its reports prevents the Department from making fully informed decisions. Failure to file reports when they are due also constitutes a violation of both 49 U.S.C. 41708 and the Department's applicable regulations.

On November 16, 1995, Western Pacific became delinquent in filing its third quarter 1995 Passenger Origin-Destination Survey (Survey) data required by Part 241. In early November, the Department's Office of Airline Information (OAI) wrote to all carriers who file Form 41 reports, including Western Pacific, to remind them of the special importance of filing the Survey report on time and that delinquencies would not be tolerated. Nevertheless, Western Pacific did not file its Survey report until December 6, 1995. In addition, Western Pacific failed to file required Form 251 reports due on July 31, 1995, and October 30, 1995, until January 11, 1996.

In mitigation, Western Pacific states that it is a new entrant airline which had to develop a computer program to collect and report the passenger origin and destination and revenue data in the format required by the Department's regulations. The development of the necessary program and the formatting of the data took longer than originally anticipated, thus resulting in the delay in the filing of the third quarter O & D report. In addition, Western Pacific indicates that it had inadvertently failed to assign responsibility for the preparation and filing of the Form 251 reports until December. Finally, Western Pacific states that it has taken the necessary steps, including the development of programs and the assignment of responsibility for the preparation of specific reports to particular individuals, to assure that these reports will be filed on a timely basis in the future.

The Enforcement Office has carefully considered the information provided by Western Pacific but continues to believe that enforcement action is warranted. In this connection, the Enforcement Office and Western Pacific have reached a settlement of this matter. Western Pacific consents to the issuance of an order to cease and desist from future violations of 49 U.S.C. 41708 and Part 241 of the Department's regulations and to the assessment of \$25,000 in compromise of potential civil penalties. Of the total penalty amount, \$12,500 shall be due within 15 days of the issuance of this order. The remaining \$12,500 shall be suspended and then forgiven unless Western Pacific violates this order's cease and desist provision within one year of the date of the order's issuance or fails to comply with the order's payment provisions, in which case the unpaid portion of the \$25,000 penalty shall become due and payable immediately. We believe that this compromise assessment is appropriate and serves the public interest. It represents an adequate deterrence to future noncompliance with the Department's reporting requirements by Western Pacific, as well as by other air carriers and foreign air carriers.

This order is issued under the authority contained in 49 CFR 1.57a and 14 CFR 385.22.

ACCORDINGLY,

1. Based on the above discussion, we approve this settlement and the provisions of this order as being in the public interest;
2. We find that Western Pacific Airlines, Inc. violated 14 CFR Part 241 by failing to file required reports in a timely manner;
3. We find that by engaging in the conduct and violation described in paragraph 2 above, Western Pacific Airlines also violated 49 U.S.C. 41708;

4. Western Pacific Airlines, and all other entities owned or controlled by or under common ownership with Western Pacific Airlines, and their successors and assignees, are ordered to cease and desist from violations of 49 U.S.C. 41708 and Part 241 of the Department's regulations;

5. Western Pacific Airlines is assessed \$25,000 in compromise of civil penalties that might otherwise be assessed for the violations found in paragraphs 2 and 3 of this order. Of the total penalty amount, \$12,500 shall be due within 15 days of the issuance of this order. The remaining \$12,500 shall be suspended and then forgiven unless Western Pacific violates this order's cease and desist provision within one year of the date of the order's issuance, or fails to comply with the order's payment provisions, in which case the unpaid portion of the \$25,000 penalty shall become due and payable immediately. Failure to pay the compromise assessment as ordered will also subject Western Pacific Airlines to the assessment of interest, penalty, and collection charges under the Debt Collection Act, and possible enforcement action for failure to comply with this order; and

6. Payment shall be made by wire transfer through the Federal Reserve Communications System, commonly known as "Fed Wire," to the account of the U.S. Treasury. The wire transfer shall be executed in accordance with the instructions contained in the Attachment to this order.

This order will become a final order of the Department 10 days after its service date unless a timely petition for review is filed or the Department takes review on its own motion.

BY:

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Deputy General Counsel

(SEAL)

For Western Pacific Airlines, Inc.

Samuel Podberesky
Assistant General Counsel for
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Western Pacific Airlines, Inc.'s EIN
(Employee ID Number)